PDF PAGE 1, COLUMNS 1, 4, & 7

“JUDGE’S ADMISSIONS HELP FRANK’S CHANCE”

PDF PAGE 1, COLUMN 4

ROSSER, FRANK’S ATTORNEY, AND
JUDGE ROAN ON WAY TO COURT

Judge L. S. Roan.

Luther Z. Rosser

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CERTIFIES TO CHEERS

IN COURT; HEARING MAY GO ON ALL WEEK

Prospects for a new trial for Leo M. Frank were made much brighter Wednesday afternoon by Judge Roan's certification of the defense's description of the disorder and demonstration in the courtroom on various occasions during Frank's trial. The judge's official approval of this fact as a ground for argument will give the defense an invaluable advantage when the arguments begin, and also before the Supreme Court in the event that it becomes necessary to carry the fight for Frank's life to the higher tribunal.

The facts to which Judge Roan certified were contained in the defense's charge that immediately on the announcement that Conley's testimony, taken to show perversion and immorality and acts wholly dissociated from the charge of murder, was to stand, there were immediate cheers, clapping of hands and stamping of feet in the courtroom.

Jury In Adjacent Room.

The jurors were in an adjacent room at the time, so close, in the opinion of Judge Roan, as to be able readily to hear the demonstration.

The defense also held that the court was in error when it refused at the time to grant a mistrial for which Attorney Arnold moved, and did not clear the courtroom as was demanded by both the attorneys for the defense.

It also was charged by the defense that during the examination of one of the witnesses the crowd made a jeering demonstration against Attorney Arnold.

Judge Roan certified to all of these facts as represented by the defense, a circumstance which is regarded as most favorable to Frank's chance for a new trial.

Solicitor Dorsey won a slight victory when the battle ranged around section 13 of the motion which declared that the Solicitor had continued his cross-examination of witnesses to draw out particular acts of immorality on the part of the pencil factory superintendent when Judge Roan had ruled against such questions. Mr. Dorsey demanded that this particular reference to him in the motion be struck out and it was granted by Judge Roan, after a bitter struggle.

Calls Testimony Prejudicial.

Another point brought up for arraignment by counsel for the defense was the testimony of Conley that he had been refused admittance to Frank's cell when taken to the Tower by detectives. Attorney Arnold ascribed this testimony as irrelevant and prejudicial before the jury and declared that the court errored in admitting it.

From that point the fight veered to section 16 of the motion pertaining to the testimony of Mrs. Arthur White, wife of a machinist at the pencil factory. The defense declared that the court erred in permitting the State to draw from the witness the fact that she had not reported the fact that she saw a negro in the

factory on the day of the murder until three days later, and then to attorneys for Frank. Attorney Rosser stated that such testimony was a direct reflection on the witness and the defense.

Rosser repeatedly charged Dorsey with quibbling, splitting hairs and on one occasion intimated that the Solicitor was seeking to hang a man “on the dotting of an ‘I’ or the crossing of a ‘t’.

No mention had yet been made of the charges of bias and prejudice against Jurors Henslee and Johenning. The early reasons had to do with errors which the court had committed, according to the contentions of the defense, in letting in certain testimony of Detectives Black and Starnes and Newt Lee and keeping out a part of that of Black.

Conley’s testimony became the subject of heated discussion immediately on the reading of the tenth reason of the defense. In this it was argued that the court had been in error in denying the motion of the defense to strike out all of Conley’s testimony in regard to the alleged perversion of the defendant on the ground that it was immaterial, irrelevant, illegal and highly prejudicial to Frank.

Dorsey Scores a Point.

The Solicitor was instant with his objection to this being one of the grounds for the arguing of a new trial. He contended that this motion by the defense had not been made at the time the evidence was put in.

Arnold retorted that the objection was put in and that the records showed it. The Solicitor conceded that the motion had been made, but called attention to the fact that this action had not been taken by Frank’s lawyers until after Conley had been cross-examined by Rosser a day and a half.

Dorsey was successful in his effort to have added to the reason the fact that the motion was made and denied only after this lapse of time. The attorneys for the defense maintained that the cross-examination up to the time the motion was made never

had touched on the subject of perversion and this also was incorporated in the reason, the Solicitor having the privilege of investigating the records on the question.

Sections 10 and 11 dealt with the same subject except that one was in narrative form and the other in questions and answers. Both were certified to by Judge Roan after the revisions had been made.

“Don’t you think you had better add five minutes to that day and a half, or, at least two minutes,” sarcastically inquired Attorney Rosser, annoyed by the Solicitor’s determination to have the time the motion was made become a part of the reason.

Violates Ruling’s Spirit.

Conley’s testimony cropped up again in the twelfth reason. Here it was maintained that, after Judge Roan had ruled that no specific acts of immorality on the part of Frank should be testified to, Solicitor Dorsey merely changed the wording of his questions and openly violated the spirit of the court’s ruling.

Dorsey first had asked Conley about Frank’s conduct with women at the factory and when this was ruled out, he asked, instead, what Conley did when women came to the factory. Conley replied that he watched at the door while the women went to Frank’s office. This, according tot eh contentions of the defense, involved Frank exactly as much as the previous question and answer would have done.

Dorsey argued that asking Conley about his own movements at the factory did not violate the judge’s ruling in regard to the specific acts of Frank. With slight revision, the reason was permitted to stand.

The court was charged with error again because of the overruling of the motion of the defense that all of Conley’s testimony bearing on the alleged immorality of Frank be stricken from the records as irrelevant, immaterial and highly prejudicial to the defendant in that it disgraced him before the jurors and

convicted him in their eyes, not because he was guilty of murder, but because they believed him guilty of perversion and depravity.

The indications Wednesday were that the review of the reasons would

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ROSSER CHARGES DORSEY WITH TRYING TO HANG ON SLIGHTEST TECHNICALITY

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not be completed before Friday. After this the arguments will take place.

A small room in the State Library in the Capitol Building was the scene of the arguments. Besides the half dozen men who were trying to save Frank and the two who were there to block efforts to keep the convicted man from the gallows and Judge Roan, were a dozen newspaper men and people directly interested in the result of the arguments.

Outside were two dozen curious people who were not allowed in the room.

Judge Roan sat near the center of a long table. This left was Herbert Haas, Leonard Haas and Reuben Arnold, attorneys assisting Luther Rosser. On the judge's right was Solicitor Dorsey and Assistant Solicitor Stevens.

Luther Rosser, big and deep-toned as usual, was in the center of the room. The pounding of his heavy cane on the floor always preceded his saying anything. A coal fire in a grate warmed the room, the walls of which were shelved with dust-covered volumes of old authors.

Financial Sheet in Dispute.

A hot dispute developed over the incorporation of the entire financial sheet in the brief of evidence as soon as the hearing began. This wrangle was followed by a series of others over practically every reason that was put forward by the defense.

Before the hearing had progressed far, it became evident that unless the opposing attorneys could reach some sort of an armistice the hearing would last four or five days. Attorney Rosser declared during a heated argument with the Solicitor that the hearing would drag out two weeks if Dorsey continued his objections to every paragraph of the brief.

Arnold and Rosser, in supporting their reasons for a new trial, charged that the stenographers had failed to make a record of many of their objections and the grounds of the objections.

Dorsey's objection to the first reason in the defense's brief was that the use of the whole financial sheet magnified this feature of Frank's case beyond its proper importance in a condensed brief of evidence.

"We couldn't boil that down," said Attorney Arnold, "because its object is to show the volume of work that Frank did on April 26, and how long it took."

“Then we are entitled to all of our evidence in extenso if that goes in,” replied Dorsey.

Arnold retorted that the defense stood absolutely on its right to have the whole financial sheet in the brief.

Judge Roan did not decide on this point at the time, and the attorneys passed on to the brief, reason by reason. His observation that the object of the financial sheet could be but one thing—to demonstrate how long a time its compilation required—indicated that he was inclined to listen to Arnold’s contention.

The Judge did not decide on the first basis for argument advanced by the defense that the court erred in letting in Lee’s testimony that Detective Black talked longer to him than did Frank, from which the Solicitor argued that Frank was not interested in getting the truth from Lee.

Second Ground Passed.

The second ground for a new trial also was left for future discussion. It was that the court was in error in letting in Lee’s testimony that Frank talked to him less time than Reuben Arnold, one of Frank’s counsel, later talked to him at the time.

Part of the third reason was struck out upon objection of Dorsey. The contention of the defense was that the court was in error to let Detective Starnes testify that Newt Lee was at the time of his arrest composed and showed no signs of trying to get away. Solicitor Dorsey later using it to make a comparison with Frank who was said to be nervous. The reference to Lee making no endeavor to escape was stricken out, the defense’s objection to the remaining testimony being that it was illegal, unwarranted and prejudicial.

Detective’s Evidence Challenged.

In succeeding reasons, the defense argued for a new trial on the contention that the court had erred in letting in Starnes testimony that the conversation between himself and Frank over the telephone, April 27, was “guarded;” in permitting before the

jury the chart of the pencil factory, with its red lines and Greek crosses, illustrating the State's theocracy of the case; in allowing Detective Black to testify that Frank when he saw him on one occasion a month before the tragedy was not nervous; in allowing Black to testify that Frank the morning he was taken to the police station had "employed" Herbert Haas and Luther Rosser as his counsel, and in forbidding Black to answer that Lee had admitted to him that the bloody shirt found at his home was his own.

In the event that a new trial is denied, Frank's attorneys will immediately carry the case up to the Supreme court rules against them.

The effect that the weird story told by Ira W. Fisher will have upon the outcome of the motion is regarded as nil. Fisher's ridiculous accusations possibly served to influence the popular mind one way or another, but it is most unlikely that they even will be mentioned either by the Solicitor or counsel for the defense, or given consideration by Judge Roan.

The hearing was set to begin in Judge Bell's courtroom on the first floor of the old City Hall, Pryor and Hunter streets, at 9 o'clock Wednesday morning, but was transferred to the State Library. Solicitor Dorsey left his home early and put the finishing touches on his preparations in his office across the street from the court house. Attorney Rosser and Arnold also had a brief conference before the hearing and then announced themselves ready to proceed.

One of the main contentions of the defense was that at least two of the jurors who decided the fate of Frank—A. H. Henslee and Marcellus Johenning—had decided that Frank was guilty before they were called upon the jury or had heard the evidence presented.

Frank's lawyers also maintained that the jurors were intimidated, or at least unduly influenced, by the demonstrations that were made during the trial. The crowds unmistakably were

hostile to the defendant, they argued, and the jurors could not help but notice this.

That there was disorder in the courtroom which it was hardly possible to suppress was argued from a conversation between Judge Roan and Deputy Sheriff Plennie Miner. The Judge was quoted by Frank's lawyers as saying during one of the many disturbances: "Can't we have order in this courtroom?"

Deputy Miner is alleged to have replied: "We can't have order, your honor, without clearing the courtroom."

Cheers for Solicitor.

The cheering that greeted Solicitor Dorsey several times toward the close of the trial also was called to the attention of the court as one of the grounds for a new trial, Jim Conley's testimony in regard to Frank's alleged conduct with women in his office in the pencil factory was used as a basis to argue that the court had been in error in admitting certain evidence into the record.

Solicitor Dorsey and Reuben Arnold were in conference Tuesday afternoon for the purpose of coming to an agreement on the exact grounds on which the new trial would be argued. The Solicitor objected to a number of contentions advanced by the defense, and these were left for the decision of Judge Roan.

Frank Lawyers Aid Fisher Plot Search.

In the effort to solve the mystery of the alleged conspiracy out of which the tale of Ira W. Fisher attempting to connect J. C. Shirley with the murder of Mary Phagan, the attorneys for Leo M. Frank will assist the furniture dealer, according to C. W. Burke, who has assisted Luther Rosser and Reuben Arnold.

He said he would find the address of Joe Hicks, the Birmingham man who went with the Fisher in the office of Chief Bodeker and related his story, which created such a sensation.

“I am perfectly willing to do my share in running this affair to the bottom, and if there is anything like blackmail connected with it, I will do all I can to have the parties convicted,” said Burke.

Restless, continually puffing at cigarettes, and giving indications of a breakdown, Fisher remains in his cell at the station house. A hearing before Justice of the Peace Puckett will be given him some time to-day, but he expresses no fear of it, asserting that he is speaking the “immaculate truth”.

There is strong belief in the minds of the officers that Fisher will break down and tell the real reason of his fanciful tale—whether it was the concoction of his own brain or a plot.

Shirley’s brothers, Russell and Frank Shirley, are more bitter toward Fisher than he is himself. J. C. Shirley is inclined to think that Fisher is crazy. The brothers believer otherwise and will push the charges which they have brought against him.

Should fisher be released, it is quite probable he will be sent back to Birmingham. Burke said that he promised Fisher if he would come to Atlanta, he would pay his fare back, and he is ready to stand this expense.

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FRANK LAWYERS ATTACK JURORS

BITTEREST CONTEST OF RETRIAL HEARING DUE OVER AFFIDAVITS

PDF PAGE 2, COLUMN 7

The most bitterly fought contest of the entire hearing on a new trial for Leo M. Frank was looked for Thursday over the alleged bias of A. H. Henslee and Marcellus Johenning, two of the twelve jurors who decided that Frank should go to the gallows as the slayer of Mary Phagan.

With the purpose of overlooking no possible aid in their assault upon these two jurors, agents for Frank’s lawyers were continuing their search Wednesday and Thursday for persons who had talked to Henslee and Johenning before the trial of Frank began and who had heard them comment in one way or another on the tragic end of the little factory girl.

The result of the combing that has been given Atlanta and the towns through which Henslee passed as travelling salesman for carriages and accessories was made evident when C. W. Burke, agent for Attorney Rosser, brought in sworn statements to the hearing from persons who were willing to testify that Henslee had expressed his belief in Frank's guilt days or several weeks before the trial began.

Before the hearing was well underway Attorney Rosser announced that there were a number of affidavits which he had not yet obtained, but which he wished to submit along with the rest as soon as they were signed. He remarked that Solicitor Dorsey had made the exchange of affidavits so late that he had not had the opportunity to get four or five counter affidavits which he knew were available.

With the review of the defense's grounds for a new trial than a third completed it, it was regarded as almost certain that the fight on the jurors would be precipitated sometime Thursday.

The defense to support heir contentions of bias and violent prejudice had more than a score of affidavits to submit from reputable and prominent persons in Atlanta, Sparta and Monroe, who swore that they had heard Henslee before the trial bitterly denounce Frank and declare that if he was called as a juror he would do his best to "break his (Frank's) neck."

Friends of the convicted factory superintendent, without minimizing in any way the weight and importance of the host of other reasons for a new trial advanced by Frank's lawyers, were jubilantly assured that there was more than enough weight in Henslee's alleged prejudice alone to furnish a basis for the granting of a new trial.

Dorsey Full of Fight.

Solicitor Dorsey went into the hearing Thursday prepared to concede nothing and determined to fight very inch of the way against the accusations of bias and prejudice. He was fortified with affidavits from Henslee and Johenning testifying to their own

lack of bias when the trial started and with affidavits from other members of the jury who swore that during the 29 days of the trial they never heard Henslee or Johenning utter a word that indicated their opinions were for or against the defendant.

Reuben Arnold made the startling charge just before the close of the first day's session that it was the crow, and not the judge and jury, who ran the Frank trial.

The discussion was on reason 38, which narrated that during Attorney Arnold's examination of one of the witnesses the spectators laughed in derision when he failed to elicit the answers desired.

"It seemed as though I was the comedian of the trial," observed Arnold. "I never knew I was so funny until that trial took place. Nearly every time I jumped up there was a

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ATTACK ON JUROR HENSLEE ALONE ENOUGH TO WIN, IS BELIEF OF FRANK DEFENSE

Continued From Page 1.

hostile guffaw somewhere back in the audience."

"Should Have Cleared Court."

The defense, in outlining its reason, held that the judge should have cleared the court or taken other radical steps to put a stop to the demonstrations. "Threats of clearing the courtroom were not sufficient as the succeeding disturbances, handclapping and other demonstrations evidenced," the reason read.

Solicitor Dorsey, objecting to this reason as he did to practically everyone that was offered, insisted that the dialogue between lawyer and witness which was taking place at the time of the laughter so as to show the real cause of the merriment.

"That's all right, let it go in," acquiesced Arnold. "I just wanted to show that it was the spectators who were running the court and not the judge and jury."

The transcript of testimony at this point was entered in the reason in accordance with the wishes of the Solicitor.

Judge Roan hurried the lawyers along in the afternoon session and more than twice as many of the reasons were taken up and passed on as in the forenoon. The majority of the reasons, most of them with slight revisions insisted upon by the Solicitor, were approved by Judge Roan. Others were dismissed from consideration temporarily to be taken up later when the Solicitor had been able to investigate them carefully by comparison with the records of the case.

Judge Tells of Applause.

One of the most significant events of the hearing came in the certification by Judge Roan of the description of the applause in the courtroom when it was announced that the testimony of Conely in regard to alleged acts of immorality on the part of Frank should remain in the record. Judge Roan certified that it was his recollection that there was applause and stamping of feet and

that there was a demonstration which easily could have been heard by the jurors who were in an adjacent room.

This certification on the part of the judge is regarded as highly favorable to the prospects for a new trial. Even should a new trial be denied by Judge Roan, the Supreme Court will not be compelled to go behind the statement of facts, as would be necessary in the event that the possibility of the jurors' hearing the demonstration was merely a contention of the defense, unsupported by the court's certification.

All of the grounds bearing on Conley's testimony which had to do with the alleged acts of perversion also were admitted as bases of argument in the move for a new trial. Practically all of the reasons were subjected to slight amendment at the suggestion of the Solicitor, but were not vitally altered.

Dorsey insisted upon a notation in all of the paragraphs to the effect that no objection to Conley's testimony along this line was made by the lawyers for the defendant until the negro had been under cross-examination for a day and a half.

Attack Miss Hall's Testimony.

The defense succeeded in getting into the reason the statement that the cross-examination had been along other lines that Frank's alleged perversion, and that this phase never had once been touched when the objection was made during the cross-examination.

Frank's lawyers also held that the court was in error in not permitting Miss Hall, the stenographer, to tell that Frank called her on the telephone the morning of the murder and informed her that he had enough work for her to keep her busy all day; in permitting the Solicitor to question Philip Chambers, an office boy at the pencil factory, in regard to purely suppositious conversations with Frank in which Frank was said to have threatened the boy with dismissal, and in not severely rebuking the Solicitor for this line of questioning, and in permitting testimony which left with the jury the impression that pay had

been withheld from the Pinkerton narratives in order that their testimony on the stand might be favorable to the defense so as to get the amounts due.

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FRANK CHARACTER EVIDENCE ASSAILED

TESTIMONY CHARGING IMMORALITY CALLED UNFAIR BY DEFENSE

The character of Leo M. Frank, a burning issue during the trial for the murder of Mary Phagan, again was the subject of animated argument at the hearing on a new trial Thursday in the library of the State Capital. Almost the entire forenoon was given over to a fight by Frank's attorneys to establish as reasons for a new trial the admission by Judge Roan of all the mass of evidence which sought to prove Frank a pervert and a desperate of the worst type.

Throughout the hearing, the lawyers for Frank made ground after ground for a new trial upon the attacks that had been made by the Solicitor upon Frank's character. It was apparent that the convicted man's lawyers were confident that the court had been led into an error by admitting testimony of this sort.

Every question asked by the Solicitor during the trial which sought to elicit answers derogatory to Frank's character and moral conduct entered into the numerous reasons for a new trial.

The admission of all the testimony bearing on Frank's alleged attitude toward women and his reported acts of perversion, particularly as testified to by Conley; the alleged bias of jurors, and the demonstrations in the courtroom are the three grounds for a new trial on which the defense will place the greatest stress in their arguments, according to all indications during the first two days of the hearing.

The testimony of Miss Irene Jackson, the pretty daughter of County Policeman Jackson, formed the basis of a heated argument at the outset of the hearing between Solicitor Dorsey and A. E. Stephens on one side and Reuben Arnold and Herbert Haas on the other, the attorneys for the defense coming off victorious.

Luther Rosser, chief of counsel for Frank, was not present when the hearing resumed in the little ante room off the library in the State Library.

Attack Girl's Testimony.

Miss Jackson’s testimony was taken up in the forty-third reason. The court was declared in error because Miss Jackson had been permitted to tell of alleged particular acts of immorality on the part of Frank which had nothing to do with the crime of the murder.

Dorsey maintained that absolutely no objection had been made at the time. Arnold and Haas replied that a blanket or omnibus objection had been made while Ashley Jones was on the stand from which a ruling came that all testimony of this class should be regarded as objected.

Defense Wins Again.

Judge Roan decided in favor of Arnold and Haas, remarking that the tesitmoynof Miss Jackosn, which had to do with Frank’s conduct in the ladies’ dressing room on the fourth floor, seemed to be covered by the objection to the cross-questioning of Jones, and also to the direct examination of C. B. Dalton, one of the State’s witnesses.

The forty-sixth reason contended that the court erred in letting in the questions of the Solicitor when Miss Lula McDonald was on the stand, Miss McDonald was asked if she was aware that Frank on the Saturday previous to the murder had been seen on a car to Hapeville in company with a young girl whom he sought to persuade to leave the car with him. The witness denied that she knew of any such circumstances, but Frank’s lawyers contended that the questions, regardless of the answers given, tended to place in the minds of the jurors an unfavorable conception of the defendant’s character, a circumstance extremely prejudicial to his case. The reason was approved by Judge Roan.

Boy’s Story Called Unfair.

The forty-seventh ground, based on the testimony of Willie Turner, also was approved as a basis of argument. Turner testified that he saw Frank talking with Mary Phagan some weeks before the murder and the defense objected on the ground that the Solicitor unfairly was seeking to build up in the minds of the

jurors the conviction that Frank for some time previous to the pencil factory tragedy was making persistent endeavors to become intimate with the girl, a suspicion which was unjust in view of the meager evidence.

The forty-eighth reason was withdrawn by Attorney Arnold because his objection made during the trial to the testimony of W. P. Murk, a street car conductor, had been withdrawn. Murk had testified that he met Daisy Hopkins one Saturday, and that she told him she was on her way to the pencil factory where she had an engagement with the "boss."

The Hopkins woman was a witness during the trial, and her character and reputation were vigorously assailed by the State.

More Defense Affidavits.

Before the hearing was well under way Attorney Rosser announced that there were a number of affidavits which he had not yet obtained, but which he wished to submit along with the rest as soon as they were signed. He remarked that Solicitor Dorsey had made the exchange of affidavits so late that he had not had the opportunity to get four or five counter-affidavits which he knew were available.

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"It seemed as though I was the comedian of the trial," observed Arnold. "I never knew I was so funny until that trial took place. Nearly every time I jumped up there was a hostile guffaw somewhere back in the audience."

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Solicitor Dorsey, objecting to this reason as he did to practically every one that was offered, insisted that the dialogue between lawyer and witness which was taking place at the time of the laughter, be entered, so as to show the real cause of the merriment.

“That’s all right, let it go in,” acquiesced Arnold, “I just wanted to show that it was the spectators who were running the court and not the judge and jury.”

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Fisher Protests His Story Is True.

Detectives were puzzled Thursday over the persistence with which Ira W. Fisher, the “man of mystery in the Phagan murder case,” sticks to his original story involving another man in the slaying of Mary Phagan and declaring Leo M. Frank is innocent. The man is an enigma, which detectives are assiduously seeking to solve, not because of any importance they attached to his remarkable recital, but in an effort to ascertain the real motive that prompted him to jump into the Frank case in such a sensational manner.

Despite the severe grillings he has undergone already, Fisher has not shown the slightest signs of weakening, and Thursday morning reiterated his story with the same show of confidence that marked his first narration. Ridicule and the Frank charge that he is “lying,” are all the same to him—neither disturbs him. He only smiles when told that he is in a “frame-up,” or is accused of being a “dopester” or a “lunatic.”

“Nothing to Take Back.”

“I’ll go to the penitentiary for life before I’ll ever change my story in the least—I’ve told just what happened, and there’s nothing for me to take back,” calmly remarked the mysterious prisoner.

Fisher said he is not worrying over the possible consequences of his trial Saturday morning before Justice of the Peace O. H. Puckett on the warrant charging him with criminal libel.

“I expected all of this—I am not surprised at being in jail,” he said, “I had read of the way witnesses in the Frank case were being attacked here, and I knew they would go for me as soon as I opened my mouth.”

“I started to come over here several weeks ago and tell all I knew about this case, but I knew they would make it hot for me, because of my trouble with my wife and my bad reputation. But I couldn’t keep my mouth shut any longer—I just worried about this thing until I had to tell somebody about it.”

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ATTACK ON JUROR HENSLEE

ALONE ENOUGH TO WIN, IS

BELIEF OF FRANK DEFENSE

Continued From Page 1.

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PDF PAGE 4, COLUMNS 1 & 7

PDF PAGE 1, COLUMN 1

ROSSER BRANDS JUROR’S DENIAL AS FALSE

PDF PAGE 4, COLUMN 7

CRUSHING ASSAULT ON CONDUCT OF TRIAL IS

MADE IN FRANK'S FIGHT

Reserving until the last their most crushing assault upon the manner in which the Frank trial was conducted and upon the ad bias of the jurors that tried the accused man, the lawyers for the defense went into the hearing for retrial Thursday afternoon armed with affidavits swearing that Juror A. H. Henslee was in Albany, Ga., on the date he has declared he was not there, and when he is said to have uttered his opinion of Frank's guilt before the trial.

Henslee met the charge that he had expressed in Albany his belief that Frank killed Mary Phagan by the declaration that he was not in that city at the time the utterances were alleged to have been made.

Attorney Rosser announced Thursday afternoon that he would submit to Judge Roan incontrovertible proof that Henslee's name was on the register at a hotel in Albany and under a date corresponding to the time in question.

As another proof that the juror was misrepresenting the facts of the case, the lawyer promised also to submit affidavits from three persons who had sworn that they saw Henslee in Albany at this time.

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Mrs. Emil Selig, Mrs. Frank's mother, to say nothing to anyone about the murder. A long debate also arose over the contention of the defense that the judge erred in letting in the testimony of Harlee Branch, a newspaper man, who made an estimate of the time that it required Jim Conley to re-enact in the factory the part he asserted he had in the Phagan tragedy.

The objection to this testimony was on the ground that it was a pure conclusion; that it was impossible to take a witness to the factory and have him indicate accurately how long it required for him to do one thing or another; that Branch did not pretend to have timed the performance. And his testimony would not have been admissible even if he had; that Conley's performance at the factory was not the same as he described it on the stand at the trial; that the negro described it entirely differently on the stand, at least, differently in many particulars; that it could not help the jury for Conley to illustrate his last affidavit when he said on the stand that much of it was a lie and didn't happen at all, and that this evidence was of another transaction and not binding on the defendant. The reason was approved by Judge Roan.

Attorneys Rosser and Arnold maintained that Pickett's testimony should be allowed to stand as a reason to be argued for a new trial, in that it was palpably immaterial evidence employed to impeach the testimony of the McKnight woman. This ground was approved after slight revision by Judge Roan.

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ATTACK ON JUROR HENSLEE ALONE ENOUGH TO WIN, IS BELIEF OF FRANK DEFENSE

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The admission of all the testimony bearing on Frank's alleged attitude toward women and his reported acts of perversion, particularly as testified to by Conley; the alleged bias of jurors, and the demonstrations in the courtroom are the three grounds for a new trial on which the defense will place the greatest stress in their arguments, according to all indications during the first two days of the hearing.

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to solve, not because of any importance they attached to his remarkable recital, but in an effort to ascertain the real motive that prompted him to jump into the Frank case in such a sensational manner.

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“Nothing to Take Back.”

“I’ll go to the penitentiary for life before I’ll ever change my story in the least—I’ve told just what happened, and there’s nothing for me to take back,” calmly remarked the mysterious prisoner.

Fisher said he is not worrying over the possible consequences of his trial Saturday morning before Justice of the Peace O. H. Puckett on the warrant charging him with criminal libel.

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Charge Old Grudge.

Charles J. Graham, attorney C. Shirley, the Atlanta merchant, the attempted victim of Ira W. Fisher, returned from an investigation of Fisher's actions in Birmingham Thursday.

Mr. Graham held a long conference with Chief of Detectives Lanford upon his arrival and Fisher was brought from his cell for another cross-examination.

The lawyer's trip mainly was for purpose of locating Joe Hicks, who it is declared, played a leading role in the Fisher fiasco when it was first revealed before Chief of Police Bodeker, of Birmingham. Hicks is said to have taken Fisher to the Birmingham police official and accused him to tell the story which accused Shirley of Mary Phagan's murder.

Investigation in the Alabama city, Mr. Graham said, failed to reveal the mysterious Hicks. It was declared there that he had disappeared following the expose of the accusations against Shirley.

The attorney, however, said that he had obtained evidence which will tend to show a motive for Fisher's fabrication.

From what Fisher told Chief Bodeker, according to Graham, he had a private grudge against Shirley and sought revenge.

When questioned on this point Thursday, however, Fisher denied any motive of that kind.

Fisher is held at police headquarters on several serious charges in connection with his story. Graham declared his investigation had not been completed.

“MOB MENACED FRANK” –ROSSER

COURT RECESSED TO ALLOW ANGER TO DIE, ATTORNEY DECLARES

Attorney Luther Z. Rosser made the positive declaration at the hearing on a new trial for Leo M. Frank Thursday afternoon that if the defendant had been in the courtroom at the time the verdict was rendered he almost certainly would have suffered violence at the hands of the huge crowd outside, especially in the event that an acquittal had been brought in.

“Why, that howling mob of 5,000 would have eaten him alive, if he had gone out among them,” shouted Rosser. “He would have been meat for them.”

Rosser’s remarks were made during a discussion of the hostile sentiment toward the prisoner, in which it was developed that Frank’s pressure at the rendering of the verdict was waived at the suggestion of Judge Roan himself, because the judge was impressed with the possibility of violence and thought it advisable to take every precautionary measure.

The expected attack upon A. H. Henslee and Marcellus Johenning, jurors of the Frank trial, was launched by the attorneys for Frank Thursday afternoon.

The jurors were charged with having expressed before the trial the opinion that Frank was guilty, and it was represented that Frank, therefore, was unable to get a fair and impartial trial.

A score of affidavits were attached as exhibits to bear out the contention of bias. Several of them were submitted to show that Juror Henslee was in Albany, Ga., on a date he specially had denied being there. It was at Albany that Henslee is alleged to have made denunciatory remarks against Frank.

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From what Fisher told Chief Bodeker, according to Graham, he had a private grudge against Shirley and sought revenge.

When questioned on this point Thursday, however, Fisher denied any motive of that kind.

Fisher is held at police headquarters on several serious charges in connection with his story. Graham declared his investigation had not been completed.

FISHER INDICTED IN DALTON AS SLAYER

Latest Sensation-Maker in Pha-Gan Case Charged With Kill-

Ing Man 5 Years Ago.

DALTON, Oct. 23—Ira Fisher, the man who produced the latest sensation in the Frank case, was to-day indicted for murder by the Grand Jury in session here.

The bill of indictment charges him with killing his brother-in-law, Dug Steele.

Steele was found dead beside the Southern Railway tracks near the northern limits of Dalton about five years ago. It appeared that a train had passed over him, for his head was cut off and the body mangled, but owing to an absence of blood it was thought he had been killed and placed by the track to hide the crime.

This caused the Coroner's jury to prolong the investigation for several days. A verdict that Steele was killed by a train was finally returned because of inability to find any evidence pointing to anyone as his slayer.

One Grand Jury investigated the death, but took no action. The affair was then forgotten until the present Grand Jury, besieged by rumors that Steele was murdered, reopened the investigation and got enough evidence to warrant the indictment of Fisher.

Chief Beavers Thursday received a telegram from the chief of police at Dalton, Ga., asking him to hold Fisher to answer a grand jury indictment there for the murder of his brother-in-law.

Fisher did not appear downcast when he was informed of this indictment. He protested his innocence, and declared the indictment is a plot to imprison him because he accused J. C. Shirley.

"The detectives are the cause of it," he declared. "They have combined against me, and the indictment is nothing but a frame-up. Bud Steel, my brother-in-law, was killed about four

years ago. Seven or eight men were under suspicion when the Coroner did his inquest. I was relieved of all suspicion at the inquest because I proved by seven, or eight people that I had sat up all night with the sick wife of a friend, Cliff Barden, and they swore I had never been out of the house. Steel and I were on the best of terms when he was killed, and had not had a quarrel like the detectives say we had."

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EX-JUSTICE S. R. ATKINSON PRAISES AND AMPLIFIES JURY SYSTEM EDITORIAL

In response to the editorial in Wednesday's Georgian, "The Jury System of Georgia on Trial, former Supreme Court Justice Spencer R. Atkinson has written the following letter.

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Editor Georgian:

I have read with great interest the splendid editorial in your issue of yesterday's date, entitled "The Jury System of Georgia on Trial." To your masterly presentation of the occasion and reasons for your editorial utterance at this time I could not hope to add. In the concluding sentence of that editorial you invite suggestions from your readers as to the proper method of "safeguarding jurors in the future," such as will make "the jury system of our State so strong that it will not break down anywhere."

System Is Simple.

I shall not presume to enter upon the discussion of the jury system as it relates to or its integrity is called in question in the particular case to which you refer. It is presumed that the courts will so deal with that matter that no odium can attach to our jury system because of any revelations which may have been made in that case.

However, such revelations may reflect upon the individual juror or jurors whose conduct is called in question. I will, however, as an interested reader of your editorial, claim your indulgence and ask the privilege of submitting some observations upon the general subject concerning which you invite discussion and suggestion.

It is submitted that the jury system of this State, as a system, is as nearly perfect as human ingenuity can devise. It possesses the merit of extreme simplicity to start with. It provides that none other save upright and intelligent citizens shall sit upon juries. It requires and provides for the impartial selection, by sworn jury commissioners, of the persons whose names shall be entered upon the jury list.

Drawing Impartial.

It provides a strictly impartial method for the drawing of jurors, and directs that they should be summoned by a sworn officer of the law.

After they are thus selected they are chosen in the given case under a system which is perfectly fair and impartial as between the parties, and they are even then as individual jurors subjected to such an examination as but for the intervention of the human element, assures absolutely the selection of only upright, intelligent and impartial jurors to pass upon the issues made.

I submit, therefore, that the system, in and of itself, is sufficiently strong. If this system, in its just operation, fails to furnish such a jury as the law requires and such a jury as measures up to the highest standard of human perfection. In my judgement, we will have to look deeper than and beyond the system for the causes which produce the failure.

Causes of Bias.

Assuming that in the process of selection those charged with administration of the system have failed of their duty, the responsibility is and should be upon the individual officers charged with one duty of selection.

Let us suppose, however, that there has been no failure here, and that still upon the jury there appears one who because of bias or prejudice, enters upon the trial with a fixed determination, we will say, in a criminal case, either to convict or acquit the defendant; the presence of such a man on a jury could result only from one of two causes—either dense ignorance, almost to the point of imbecility, or inexcusable and criminal corruption.

Before being sworn in a felony case each individual juror is required to answer, on oath, these three questions in order to test his impartiality;

First. Have you, from having seen the crime committed, or from having heard any of the testimony delivered on oath, formed and expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

When Disqualified.

If he answers Yes, he is disqualified.

Second. Have you any bias or prejudice in your mind, either for or against the prisoner at the bar?

An affirmative answer to this question disqualifies him.

Third. Are you perfectly impartial between the State and the accused?

If the answer in the negative, he is disqualified.

I therefore submit to every candid mind that no man can truthfully and honestly answer these questions and permit himself to be chosen as a juror if he has upon his mind such a bias as amounts to a fixed opinion in regard to the guilt or innocence of the person being tried.

It will be observed, then, that the fault, if any arising from a failure of justice in a given case, in so far as that failure rests upon the finding of the jury, it is not to be attributed to the jury system, nor ought the right of trial by jury he subjected to invidious criticism because of the happening of such an event, but, on the contrary, it should be attributed to the man upon whom the system operates and who is engaged in the execution of the duties enjoined upon him by that system.

It is therefore that I fear the defect to which you refer lies deeper than the system. It is imbedded in the heart and conscience of the man who abuses his right to sit on a jury.

If trial by jury as an institution or the administration of public justice (and by the term public justice I means justice administered in accordance with the law as opposed to that species of private justice exemplified in the so-called system

known as trial by mob) shall fall of the purpose for which it was originally designed, such failure must be attributed to the men by whom the law is administered, and not to other cause.

If men deliberately swear in as jurors for the corrupt purpose of bringing about a particular result, or after being sworn in, led by prejudice they heed not the voice of reason, or if overmastered by passion they should tear away the very pillars of the temple in order to gratify their private malice or a supposed public demand for the sacrifice of a victim, it can not be supposed that **any** institution and withstand such an assault.

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When violence rules the land of mad anarchy rides upon the wings of revolution, we can not hope that justice may assert herself; but when, in normal times, people come to truly value life, liberty and the right to enjoy property, and the constitutional guarantees for stability, their minds will instinctively turn into the right of trial by juror as the one institution which affords to them protection against the encroachments of arbitrary power.

The right of trial by jury lies close to the hearts of the American people. It is sacred wherever the common law prevails. It is the sheet anchor which has steadied Anglo-Saxon institutions amidst the storms of revolution which have threatened to overwhelm them in the past.

It has been the one institution which has afforded protection to the weak against the aggressions of the strong, given shelter to the poor when their rights were invaded by the rich and powerful, and has at all times been the sure refuge of the citizen, whatever his station in life, against those who, in violation of law, would despoil him of his rights.

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